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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,747	11/21/2003	Benny Souder	50277-2343	1778
29989	7590	01/03/2007	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			FLEURANTIN, JEAN B	
2055 GATEWAY PLACE			ART UNIT	PAPER NUMBER
SUITE 550			2162	
SAN JOSE, CA 95110				
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/718,747	SOUDER ET AL.	
	Examiner	Art Unit	
	JEAN B. FLEURANTIN	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 October 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 and 32-39 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9, 18-31 and 40-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :9/17/04, 2/14/05, 3/17/05, 5/02/05, 9/19/05, 1/30/06, 3/29/06, 8/11/06.

DETAILED ACTION

Response to Amendment

1. This is in response to applicant's arguments submitted on 09/19/06.

This following is the status of claims:

Claims 10-17 and 32-39 are withdrawn from consideration as indicated in the last Office action.

Claims 1-9, 18-31 and 40-44 remain pending for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 9/17/04, 2/14/05, 3/17/05, 5/02/05, 9/19/05, 1/30/06, 3/29/06, 8/11/06 and 10/30/06. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Arguments

Applicant's arguments, submitted on 09/19/06 with respect to claims 1-44 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claim 18 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 and 11-72 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

Products may be either machines, manufactures, or compositions of matter.

A *machine* is "a concrete thing, consisting of parts or of certain devices and combinations of devices." *Burr v. Duryee*, 68 U.S. (1 Wall) 531, 570 (1863).

As per claims 1 and 18

The independent claims 1 and 18, the method, program and system as recited in the claims, in view of the above cited MPEP section is not statutory, because "a method for automatically provisioning data in a distributed database system, the method comprising the steps: a database server causing a tablespace to be transported from a first file system to a second file system; and after transporting said tablespace to said second file system, said database server importing said tablespace into a local database managed by said database server" is not statutory, because the claimed physical structure implementation does not appear to be functional descriptive material and does not produce any tangible result.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is

recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

All dependent claims are rejected under the same rational.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 18-28 and 40-44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. in 6,272,503 issued to Bridge, Jr. et al., ("Bridge").

As per claim 1, Bridge discloses "a method for automatically provisioning data in a distributed database system" (i.e., automatically importing (transporting) to target database; see col. 14, lines 2-26), the method comprising the steps:

"a database server causing a tablespace to be transported from a first file system to a second file system" (i.e., transferring tablespace between two databases; see col. 9, lines 41-50); and "after transporting said tablespace to said second file system, said database server importing said tablespace into a local database managed by said database server" (i.e., transferring tablespace from source database to target database; see col. 9, lines 44-50 and Fig. 12a).

As per claim 2, Bridge discloses "a database server causing a tablespace to be transported and the step of said database server importing said tablespace are both performed in response to invocation of a routine" (see col. 9, lines 46-50).

As per claim 3, Bridge discloses "said routine is written in code that conforms to a database language and that may be executed by a database server" (i.e., executing by processor instructions; see col. 5, lines 32-39).

As per claim 4, Bridge discloses "importing includes attaching said tablespace to said local database" (see col. 9, lines 44-46).

As per claim 5, Bridge discloses "the tablespace is attached to another database before and during performance of the step of said database server causing a tablespace to be transported" (see col. 10, lines 16-21).

As per claim 6, Bridge discloses "the tablespace is offline before and during performance of the step of said database server causing a tablespace to be transported" (see col. 10, lines 21-21).

As per claim 18, in addition to claim 1, Bridge further discloses "wherein said set of one or more files store data for a database" (i.e., collecting one or more datafile; see col. 9, lines 23-24).

As per claim 19, the limitations of claim 19 are similar to claim 4, therefore, the limitations of claim 19 are rejected in the analysis of claim 4, and this claim is rejected on that basis.

As per claim 20, in addition to claim 1, Bridge further discloses "metadata describing database objects and commands for inserting data into the database objects, wherein the step of provisioning includes importing said data into said database by executing commands" (see col. 3, lines 25-34).

As per claim 21, in addition to claim 1, Bridge further discloses "said set of one or more files includes backup files created by a recovery manager, wherein the step of provisioning includes causing said recovery manager to create said database from said backup files" (see col. 6, line 64 to col. 7, line 5).

As per claim 22, in addition to claim 1, Bridge further discloses "an archive log stores data recording changes to said database made after creating the backup files, wherein the step of provisioning further includes changing said database to reflect changes recorded in said archive log" (see col. 6, line 64 to col. 7, line 5).

As per claim 23, in addition to claim 1, Bridge further discloses "a computer-readable medium carrying one or more sequences of instructions which, when executed by one or more processors, causes the one or more processors to perform the method" (i.e., instructions which, when executed by one or more processors; see col. 5, lines 5-11).

As per claims 24-28 and 40-44, the limitations of claims 24-28 and 40-44 are computer-readable medium carrying one or more sequences of instructions, which are similar to method claims 1-9 and 23, therefore, the limitations of claims 24-28 and 40-44 are rejected in the analysis of claims 1-9 and 23, and these claims are rejected on that basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over of U.S. Patent No. in 6,272,503 issued to Bridge, Jr. et al., ("Bridge") in view of U.S. Patent No. 6,859,768 issued to 5,758,345 issued to Wang, ("Wang").

As per claim 7, Bridge discloses "importing the tablespace includes attaching a copy of the tablespace, wherein the copy is different than said tablespace" (i.e., importing and copying to target database system; see col. 13, lines 48-55 and Fig. 13a and 13b).

Bridge fails to explicitly discloses said database server provisions a synchronization mechanism that applies changes made to the tablespace to the copy. However, Wang discloses said database server provisions a synchronization mechanism that applies changes made to the tablespace to the copy (see Wang col. 14, line 59 to col. 15, line10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of Bridge by database server provisions a synchronization mechanism that applies changes made to the tablespace to the copy as disclosed by Wang (see Wang col. 14, lines 59-66). Such a modification would allow the method of Bridge to provide a method which is portable among different database vendors, therefore, improving the reliability of automatic and dynamic of provisioning of databases.

As per claims 8 and 9, the limitations of claims 8 and 9 are similar to claim 7, therefore, the limitations of claims 8 and 9 are rejected in the analysis of claim 7, and these claims are rejected on that basis.

limitations of claims 8 and 9 are rejected in the analysis of claim 7, and these claims are rejected on that basis.

As per claims 29-31, the limitations of claims 29-31 are computer-readable medium carrying one or more sequences of instructions, which are similar to method claims 1-9 and 23, therefore, the limitations of claims 29-31 are rejected in the analysis of claims 1-9 and 23, and these claims are rejected on that basis.

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

CONTACT INFORMATION

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571 - 272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571 - 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jean Bolte Fleurantin

Patent Examiner

Technology Center 2100

December 23, 2006